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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO.       |
|--|-------------|----------------------|-----------------------------|------------------------|
| 10/687,162   | 10/16/2003  | Robert D. Harty      | 0006/01146                  | 6814                   |
| 27197  | 7590        | 08/18/2008           |                             |                        |
| CHERSKOV & FLAYNIK<br>THE CIVIC OPERA BUILDING<br>20 NORTH WACKER DRIVE, SUITE 1447<br>CHICAGO, IL 60606 |             |                      | EXAMINER<br>PATEL, TAJASH D |                        |
|  |             |                      | ART UNIT<br>3765            | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>08/18/2008     | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/687,162 | <b>Applicant(s)</b><br>HARTY, ROBERT D. |  |
|                              | <b>Examiner</b><br>Tejash D. Patel   | <b>Art Unit</b><br>3765                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7,10-16 and 18-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16,18-20 and 28 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7,10,12,14 and 21-27 is/are rejected.
- 7) ☒ Claim(s) 11,13 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |



## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

((e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4-5, 7, 10, 12, 14, and 21-27 are rejected under U.S.C. 102(e) as being anticipated as understood by Cleveland (US 6,854,134). Cleveland discloses a device to protect the neck and the base of the skull while allowing unimpeded motion of the head from either side to side or front to front adapted to be worn with a helmet (2) that makes contact with the wearer at multiple and distinct location by distributing force of impact that including a first free hanging impact resistant pliable substrate (3,24) that extends upward from approximately the first thoracic vertebra to the base of the cranium when it ends in a free hanging depending end under the helmet that forms a zone of unbroken neurological protection to the back of the neck as shown in figures 5 and 6.

Further, straps/rigid planar substrate shield (4), col. 2, lines 63-65 extends from the first substrate having closure/securing means (6,7) and around a ventral region of the neck as shown in figure 1. Further, the first substrate defines an arcuate outer shell with a integral cushioning substrate (25,26) a shown in figure 1. Also, a reversible deformable

second substrate (10) has a plurality of reversible substrates (17,18) that is proximate the first substrate and make contact at multiple and distinct contact location as also shown in figure 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland.

With regard to claim 8, it would have been obvious that the device of Cleveland can be made of translucent material depending on availability of material at the device was made or depending on the end use thereof.

***Response to Amendment***

5. The amendment and arguments filed on May 6, 2008 have been considered. In view of such, the objection to claims 1, 13 and 26 has been withdrawn. Further, the rejection under 112-2nd for claims 2, 7-8, 11-13 and 26 has also been removed. In view of the amendment, this office action is being made FINAL over a newly discovered prior art.

*Allowable Subject Matter*

6. Claims 11, 13 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 16, 18-20 and 28 are allowable because the prior art does not teach or suggest the recitation therein including a neck protector having a first substrate that extends from under a helmet to a first thoracic vertebra in an unfastened manner in combination with a second substrate being integrally molded to the first substrate having means for positioning cold/hot packs therein.

*Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The examiner's supervisor Mr. Gary Welch can be reached at (571) 272-4996. The group fax number is (571) 273-8300.

August 11, 2008

/Tejash Patel/  
Primary Examiner